STATE CONTROL OF TRUSTS.[1]

TRUSTS continue to limit production and fix prices in spite of restrictive laws in more than thirty states. This failure of state laws must be due to lack of constitutional power, or to neglect in the exercise of a power that exists. Prohibitions and penalties in these laws have thus far been aimed almost exclusively against agreements between independent persons or corporations to regulate production, supply or prices. Meantime the right of corporations to purchase and hold property in any or all of the states has been little if at all reduced.

Two or more corporations engaged in the same line of manufacture in a single state may not, under some laws, make an agreement to regulate operations and prices. But a third corporation may in most, if not in all, the states purchase the entire plants of the competing corporations, and thus by indirect means effect complete control over their products. Moreover, the validity of this transaction remains the same though the stockholders of the two competing corporations unite to form the purchasing corporation. Thus, though the state law forbids these stockholders to combine in one way, it gives them a corporate charter for the express purpose of combination in another way. Such operations are not even limited by state lines. A corporation chartered in only one state, and therefore foreign to every other state, is permitted by present laws to purchase and hold all the manufacturing plants of any particular kind in the United States. Having purchased all or a majority of the plants that produce commodities of a certain kind, the trust — that is, the corporation foreign to all the states save one — is obviously able to control the supply and prices of these commodities. In this way and by these means industrial trusts are formed and maintained.

The United States Census of 1900[2] records the operations of 185 industrial combinations or trusts that control 2,216 plants located in forty-two states and territories. Each of these trusts

[2] Vol. VII, p. lxxv.

is a corporation chartered by one state in order to purchase the formerly competing plants which it now holds in many states. The entire structure of trusts is thus founded on and supported by state laws. First comes the corporate charter granted by one state, and second and equally important are the laws of all the other states that permit the foreign corporation to purchase and operate plants within their respective limits. Without the right to own and operate manufacturing plants, mines and forests in other states, a corporate charter from any one state would be useless for trust purposes. Each state now supports and protects foreign corporations in monopoly ownership of the instruments of production in certain lines within its territory. As long as there is monopoly ownership of factories, there cannot be competitive prices for their products.

If the states are to control trusts, the power of foreign corporations to own forests, mines and factories in all the states must either be destroyed or be made subject to burdens that materially limit its exercise. The ability of the states to control trusts thus depends on the power of each state to regulate or prohibit the ownership by foreign corporations of mines, forests and factories within its limits. Such power as a state has in this respect depends in large measure on the nature of a corporate charter. In Head & Amory *v.* The Providence Insurance Company,[1] Chief Justice Marshall, referring to the corporation, said:

> It may correctly be said to be precisely what the incorporating act has made it; to derive all its powers from that act, and to be capable of exerting its faculties only in the manner which that act authorizes.

In Paul *v.* Virginia,[2] where the rights of a foreign corporation were under consideration, the Supreme Court said:

> Now, a grant of corporate existence is a grant of special privileges to the corporators, enabling them to act for certain designated purposes as a single individual, and exempting them (unless otherwise specially provided) from individual liability. The corporation, being the mere creation of local law, can have no legal existence beyond the limits of the sovereignty where created.

[1] 2 Cranch, 127. [2] 8 Wallace (U. S.), 168.

Speaking again of the nature of a corporation, in Providence Bank *v.* Billings,[1] Chief Justice Marshall said: "The great object of a corporation is to bestow the character and properties of individuality on a collective and changing body of men." Assertion of the fact that a corporate charter is simply a privilege granted by and dependent on the law of some particular state is found in later as well as earlier decisions of the Supreme Court. A statute of Pennsylvania that imposed an annual license fee on certain foreign corporations was contested in Pembina Milling and Mining Co. *v.* Pennsylvania,[2] decided in 1887. In the course of its opinion sustaining the validity of this statute the Supreme Court said:

> Such corporations are merely associations of individuals united for a special purpose, and permitted to do business under a particular name and have a succession of members without dissolution.

Again, in Horn Silver Mining Company *v.* New York State,[3] decided in 1892, Mr. Justice Field said, in delivering the opinion of the court:

> A corporation being the mere creature of the legislature, its rights, privileges and powers are dependent solely upon the terms of its charter. Its creation (except where the corporation is sole) is the investing of two or more persons with the capacity to act as a single individual with a common name, and the privilege of succession in its members without dissolution, and with a limited individual liability.

With these expressions as to corporations, running through the opinions of the court for more than half a century, it is easy to understand the meaning of statements like that of Chief Justice Marshall, in Dartmouth College *v.* Woodward,[4] where he said that "a corporation is an artificial being, invisible, intangible, and existing only in contemplation of law." A being that exists "only in contemplation of law" does not exist in fact at all, but is simply a convenient designation for the "grant of special privileges to the corporators," by which one, two, or more persons are enabled to act in a certain way under a particular name and

[1] 4 Peters, 514, 562.
[2] 25 U.S., 181.
[3] 143 U. S., 305.
[4] 4 Wheaton, 636.

with "limited individual liability." Legislatures may confer whatever special rights and privileges they will on certain natural persons, and give these rights and privileges whatever names they choose. After the christening is over, however, there will remain only the natural persons with their newly acquired rights, the names of these rights, and nothing more. No legislative fiat can increase the number of real persons or objective things

Since a corporation is merely the name given to a bundle of rights or special privileges that may be conferred on one or more persons, the corporate privileges can be enjoyed only where the law of their creation is in force, or where some other law permits. In Bank of Augusta *v.* Earl,[1] decided in 1839, the question whether a Georgia corporation had the right to do business in Alabama arose between the bank and a citizen of the latter state. Chief Justice Taney, speaking for the Supreme Court, said:

> It exists only in contemplation of law, and by force of law; and where that law ceases to operate, and is no longer obligatory, the corporation can have no existence. It must dwell in the place of its creation, and cannot migrate to another sovereignty. . . . We think it well settled, that by the law of comity among nations, a corporation created by one sovereignty is permitted to make contracts in another, and to sue in its courts. . . . But we have already said that this comity is presumed from the silent acquiescence of the state. Whenever a state sufficiently indicates that contracts which derive their validity from its comity are repugnant to its policy, or are considered as injurious to its interests. the presumption in favor of its adoption can no longer be made.

An act passed by the Virginia legislature, in 1866, provided that no foreign insurance company should do business within the state until it had deposited bonds of a certain character with the state treasurer. One Samuel Paul violated the provisions of this act by doing business as agent for insurance companies incorporated in the State of New York, without having deposited the required bonds. Paul was tried, convicted and fined by the Virginia courts, and he then brought his case to the United States Supreme Court on the ground that the act of Virginia relative to

[1] 13 Peters (U. S.), 519.

foreign insurance companies was in conflict with that clause of the federal Constitution which provides that "the citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states." [1] The decision in this case, Paul *v.* Virginia [2] above named, supported the validity of the state law. Referring to the clause of the Constitution just quoted, the Supreme Court said:

The answer which readily occurs to the objection founded upon the first clause consists in the fact that corporations are not citizens within its meaning. The term citizens, as there used, applies only to natural persons, members of the body politic, owing allegiance to the state, not to artificial persons created by the legislature, and possessing only the attributes which the legislature has prescribed. . . . Special privileges enjoyed by citizens in their own states are not secured in other states by this provision. It was not intended by the provision to give the laws of one state any operation in other states. They can have no such operation, except by the permission, express or implied, of those states. The special privileges which they confer must, therefore, be enjoyed at home, unless the assent of other states to their enjoyment therein be given. . . . The recognition of its existence even by other states, and the enforcement of its contracts made therein, depend purely upon the comity of those states, — a comity which is never extended where the existence of the corporation or the exercise of its powers are prejudicial to their interests or repugnant to their policy. Having no absolute right of recognition in other states, but depending for such recognition and the enforcement of its contracts upon their assent, it follows, as a matter of course, that such assent may be granted upon such terms and conditions as those states may think proper to impose. They may exclude the foreign corporation entirely; they may restrict its business to particular localities, or they may exact such security for the performance of its contracts with other citizens as in their judgment will best promote the public interest. The whole matter rests in their discretion. . . . If, on the other hand, the provision of the Constitution could be construed to secure to citizens of each state in other states the peculiar privileges conferred by their laws, an extra-territorial operation would be given to local legislation utterly destructive of the independence and the harmony of the states.

[1] Art. IV, 2, 1. [2] 8 Wallace, 168.

The foregoing decision thus clearly holds that corporate rights are simply the special rights of certain natural persons acting under the charter, though as a matter of procedure these rights must be asserted in the special name of the charter. But when the natural person goes beyond the jurisdiction of the law by which his special rights are granted, he leaves these rights behind. Were it not for the sophistries that have been built up on the word "corporation," this proposition would be too plain for argument. Thus certain persons may be authorized to practise law or medicine, or sell liquor or engage in the plumbing trade by one state, but this gives them no right to follow these occupations in other states. In Pembina Milling and Mining Company *v.* Pennsylvania,[1] above mentioned, the doctrine of Paul *v.* Virginia was affirmed. In the course of its opinion the Supreme Court said:

Nor does the clause of the Constitution declaring that the "citizens of each state shall be entitled to all privileges and immunities of citizens in the several states" have any bearing upon the question of the validity of the license tax in question. Corporations are not citizens within the meaning of that clause. This was expressly held in Paul *v.* Virginia. . . . In the subsequent case of Ducat *v.* Chicago, 10 Wall., 410, the court followed this decision, and observed that the power of the state to discriminate between her own domestic corporations and those of other states, desirous of transacting business within her jurisdiction, was clearly established by it and the previous case of Augusta *v.* Earle, 13 Pet., 519, and added that "as to the nature or degree of discrimination, it belongs to the state to determine, subject only to such limitations on her sovereignty as may be found in the fundamental law of the Union."

A still later case affirming similar views is that of Horn Silver Mining Company *v.* New York State,[2] where the Supreme Court said:

As to a foreign corporation,— and all corporations in states other than the state of their creation are deemed to be foreign corporations,— it can claim a right to do business in another State, to any extent, only subject to the conditions imposed by its laws. . . . This doctrine has

[1] 125 U. S. 181. [2] 143 U. S., 305.

been so frequently declared by this court that it must be deemed no longer a matter of discussion, if any question can ever be considered at rest. Only two exceptions or qualifications have been attached to it in all the numerous adjudications in which the subject has been considered, since the judgment of this court was announced more than half a century ago in Bank of Augusta *v.* Earle, 13 Pet., 519. One of these qualifications is that the state cannot exclude from its limits a corporation engaged in interstate or foreign commerce, established by the decision in Pensacola Telegraph Company *v.* Western Union Telegraph Company, 96 U. S., 1, 12. The other limitation on the power of the state is where the corporation is in the employ of the general government.

As it cannot be maintained that industrial trusts are in the employ of the federal government, they cannot claim to monopolize the mines, forests and factories of the several states on that ground. The meaning of government employment is illustrated in Pembina Mining Company *v.* Pennsylvania,[1] where the Supreme Court said:

And undoubtedly a corporation of one state, employed in the business of the general government, may do such business in other states without obtaining a license from them. Thus, to take an illustration from the opinion of Mr. Justice Bradley in a case recently decided by him, "if Congress should employ a corporation of ship-builders to construct a man-of-war, they would have the right to purchase the necessary timber and iron in any state of the Union," and, we may add, without the permission and against the prohibition of the state.

This same illustration was repeated by the court in Horn Silver Mining Company *v.* New York State.[2] Evidently the ship-building corporation would be able to escape the restrictions of state laws only as to matters involved in its federal employment.

But it may be contended that every corporation sending its goods into different states is engaged in interstate commerce in such a way as to escape regulation or exclusion by any state. This view is not correct, however, as may be seen from Pensacola Telegraph Company *v.* Western Union Telegraph Company,[3]

[1] 125 U. S., 181. [2] 143 U. S., 305. [3] 96 U. S., 1, 12.

cited by the court above in support of the proposition that a state cannot exclude a corporation engaged in interstate commerce. The case just named, decided in 1877, involved the right of Florida to exclude all telegraph companies except one from certain parts of the state where it had granted a monopoly of the business. In an opinion denying the power of the state to exclude a telegraph company that was authorized by Congress to enter the territory in question, the Supreme Court said:

> The legislation of Florida, if sustained, excludes all commercial intercourse by telegraph between the citizens of the other states and those residing upon this territory, except by the employment of this corporation. The United States cannot communicate with their own officers by telegraph except in the same way. The state, therefore, clearly has attempted to regulate commercial intercourse between its citizens and those of other states, and to control the transmission of all telegraphic correspondence within its own jurisdiction.

The sort of connection with interstate commerce that frees a corporation from state control is further illustrated in Telegraph Company *v.* Texas,[1] decided in 1881, where a state tax on each message sent by the company was contested. In the course of an opinion holding this tax invalid, it was said by the Supreme Court:

> A telegraph company occupies the same relation to commerce as a carrier of messages, that a railroad company does as a carrier of goods. . . . Clearly, if a fixed tax for every two thousand pounds of freight carried is a tax on the freight, or for every measured ton of a vessel a tax on tonnage, or for every passenger carried a tax on the passenger, or for the sale of goods a tax on the goods, this must be a tax on the messages.

There is nothing in the two cases just considered to indicate that foreign corporations whose connection with interstate commerce consists in the sending of goods to different states can demand admission in any state. That a mere manufacturing and trading corporation cannot escape regulation or even exclusion by states to which it is foreign has been decided by the Supreme Court in several instances.

[1] 105 U. S., 460.

An act of the Pennsylvania legislature, passed in 1879, imposed a license tax on certain foreign corporations that might maintain offices in the state. The Pembina Mining Company secured offices in Philadelphia in 1880, after having been chartered in Colorado to do a general mining business. Subsequently the company contested the office tax on the ground, among others, that it was a regulation of interstate commerce. In deciding the case [1] the Supreme Court said on this point:

It is not perceived in what way the statute impinges upon the commercial clause of the federal constitution. It imposes no prohibition upon the transportation into Pennsylvania of the products of the corporation, or upon their sale in the commonwealth. It only exacts a license tax from the corporation when it has an office in the commonwealth for the use of its officers, stockholders, agents, or employees. . . . The exaction of a license fee to enable the corporation to have an office for that purpose within the commonwealth is clearly within the competency of its legislature.

After pointing out the exceptions to the rule that a state may regulate or exclude foreign corporations, the court continued:

These exceptions do not touch the general doctrine declared as to corporations not carrying on foreign or interstate commerce, or not employed by the government. As to these corporations, the doctrine of Paul *v.* Virginia applies. The Colorado corporation does not come within any of the exceptions. Therefore, the recognition of its existence in Pennsylvania, even to the limited extent of allowing it to have an office within its limits for the use of its officers, stockholders, agents, and employees, was a matter dependent on the will of the state. It could make the grant of the privilege conditional upon the payment of a license tax, and fix the sum according to the amount of the authorized capital of the corporation. The absolute power of exclusion includes the right to allow a conditional and restricted exercise of its corporate powers within the state.

A still later case, decided in 1892, shows again that state taxation of a foreign manufacturing and trading corporation is not a regulation of interstate commerce. During the years ending No-

[1] Pembina Mining Co. *v.* Pennsylvania, 125 U. S., 181.

vember 1, 1881 and 1882, the Horn Silver Mining Company, a Utah corporation, did its financial business and correspondence in New York, and also made up its silver into standard bars there. On May 26, 1881, there was approved a New York statute taxing corporations "organized under any law of the state or of any other state or country, and doing business in the state."

New York brought an action against the corporation to recover taxes under this law, and it was contested on the ground, among others, that the tax in question was a regulation of interstate commerce. In reply to this contention the Supreme Court said:[1]

> The extent of the tax is a matter purely of state regulation, and any interference with it is beyond the jurisdiction of this court. The objection that it operates as a direct interference with interstate commerce we do not think tenable. The tax is not levied upon articles imported, nor is there any impediment to their importation. The products of the mine can be brought into the state and sold there without taxation, and they can be exhibited there for sale in any office or building obtained for that purpose; the tax is levied only upon the franchise or business of the company.

The distinction between a manufacturing and trading corporation and a common carrier, as to interstate commerce, is even more clearly stated by the court in New York State *v.* Roberts,[2] decided in October, 1898. This case arose under a statute that taxed corporations in New York on the basis of their capital employed within that state, if they carried on manufacturing operations in any other state. A Michigan corporation, with its main factory in that state, conducted the business of importing and selling goods at New York City. Business fixtures valued at $15,000 were used at New York City, a stock of goods from Michigan valued at $50,000 was regularly carried there, and $23,000 to $62,000 was employed yearly in the purchase of drugs. The tax for the Michigan corporation in New York was based on $90,000, but it was contended that this should be reduced to $15,000, the value of the fixtures, and that the tax laid was a regulation of interstate commerce.

[1] Horn Silver Mining Co. *v.* New York, 143 U. S., 305.
[2] 171 U. S., 658.

Justice Shiras delivered the opinion of the court upholding the tax as laid, and said in part:

Here no tax is sought to be imposed directly on imported articles, or on their sale. This is a tax imposed on the business of a corporation, consisting in the storage and distribution of various kinds of goods, some products of their own manufacture, and some imported articles. From the very nature of the tax, being laid as a tax upon the franchise of doing business as a corporation, it cannot be affected in any way by the character of the property in which its capital stock is invested. . . . When a corporation of one state, whose business is that of a common carrier, transacts part of that business in other states, difficult questions have arisen, and this court has been called upon to decide whether certain taxing laws of the respective states infringe upon the freedom of interstate commerce. . . . It is not necessary in this case to enter into a subject so difficult, but the cases are referred to as showing the distinction between corporations organized to carry on interstate commerce, and having a quasi-public character, and corporations organized to conduct strictly private business. The corporation concerned in the present litigation is of the latter character, and the case comes within the doctrine of Paul *v.* Virginia, 8 Wall., 168, and of subsequent cases affirming that one.

Justices Harlan and Brown dissented on the ground that the tax was a regulation of interstate commerce.

Evidently, the refusal by a state of the right of foreign corporations to own factories within its limits is not a regulation of interstate commerce, since even the right to do business in the corporate name or have an office there may be denied or taxed.

It has been contended, however, that exclusion or special taxation of foreign corporations by a state violates the fourteenth amendment of the federal constitution by denying equal protection of the laws to all persons within its jurisdiction. In Pembina Mining and Milling Company *v.* Pennsylvania,[1] this contention was thus answered by the Supreme Court:

The plaintiff in error is not a corporation within the jurisdiction of Pennsylvania. The office it hires is within such jurisdiction, and on condition that it pays the required license tax it can claim the same

[1] 125 U. S., 181.

> protection in the use of the office that any other corporation having a similar office may claim. It would then have the equal protection of the law so far as it had anything within the jurisdiction of the state, and the constitutional amendment requires nothing more. The state is not prohibited from discriminating in the privileges it may grant to foreign corporations as a condition of their doing business or hiring offices within its limits, provided always such discrimination does not interfere with any transaction by such corporations of interstate or foreign commerce. It is not every corporation, lawful in the state of its creation, that other states may be willing to admit within their jurisdiction or consent that it have offices in them; such, for example, as a corporation for lotteries. And even where the business of a foreign corporation is not unlawful in other states, the latter may wish to limit the number of such corporations, or to subject their business to such control as would be in accordance with the policy governing domestic corporations of a similar character. The states may, therefore, require, for the admission within their limits of the corporations of other states, or of any number of them, such conditions as they may choose, without acting in conflict with the concluding provision of the first section of the Fourteenth Amendment.

It should be noted that the quotation just made is in the main of full judicial force, and not mere dicta, because the Pennsylvania statute applied to foreign but not to domestic corporations, and also to only that class of foreign corporations "that does not invest and use its capital in the Commonwealth."

In a previous case, Philadelphia Fire Association *v.* New York,[1] decided after the adoption of the Fourteenth Amendment, the Supreme Court sustained a New York statute that discriminated against Pennsylvania corporations. Again, in Hooper *v.* California,[2] the Supreme Court held that a statute of the latter state discriminating against foreign insurance companies was valid. A statute of Tennessee provided that residents of that state should have their claims satisfied from the assets of insolvent foreign corporations doing business there before debts due to residents of other states were paid. In Blake *v.* McClung,[3] decided in 1898, the Tennessee statute was held to be void as to citizens of other states, but valid as to foreign corporations not within the juris-

[1] 119 U. S., 110, 120. [2] 155 U. S., 652. [3] 172 U. S., 239.

diction of Tennessee. Replying to the contention that a certain Virginia corporation in this case was denied equal protection of the laws, the Supreme Court said:

> A corporation not created by Tennessee, nor doing business there under conditions that subjected it to process issuing from the courts of Tennessee at the instance of suitors, is not, under the above clause of the Fourteenth Amendment, within the jurisdiction of that state.

On the foregoing authorities it is clear that manufacturing and trading corporations may be entirely excluded from a state where they are foreign, or may be admitted under such discriminating laws as the state may elect. It is thus easy for a state to prevent monopoly ownership of its mines, forests and factories by a trust that has not yet come under its jurisdiction. As the greater part of the factories in many important lines of industry throughout the United States are already owned by trusts, effective regulation by the several states must be applied to foreign corporations already within their jurisdiction.

When a foreign corporation has been admitted to a state, and has purchased many or all of the factories of a certain sort therein, can the state break up this monopoly ownership of its factories? In other words, after a state has licensed a foreign corporation to do business within its limits and the corporation has acted on the license, can the state increase the burdens incident to the license, or even force the foreign corporation to retire from the state? If the state can do neither of these things, existing trusts are safe in their monopolies. Unless a foreign corporation has obtained from a state a license to do business within its limits for a definite period and for a valuable consideration, it seems clear that there is no contract with the state. Even where such a contract has been entered into, it might not protect the foreign corporation from an increase in the license tax, unless this tax was fixed by the contract, and so of other laws unfavorable to the foreign corporation.

In Horn Silver Mining Company *v.* New York,[1] it was shown that the company had been admitted and did business in the state during at least one year prior to November 1, 1881, while

[1] 143 U. S., 305.

the law under which it was taxed was enacted May 26, 1881, after the admission of the foreign corporation. This tax was held valid in spite of the contention that it violated the Fourteenth Amendment, and the Supreme Court said on this point:

There can be, therefore, no possible objection to the validity of the tax prescribed by the statute of New York, so far as it relates to its own corporations. Nor can there be any greater objection to a similar tax upon a foreign corporation doing business by its permission within the state.

A similar result as to the right of a state to increase the burdens and cut down the rights of foreign corporations that had previously been admitted within its limits was reached in Orient Insurance Company *v.* Daggs.[1] In that case a Missouri statute of 1889 which related to the liability of fire insurance companies was under consideration. The statute provided that "in case of total loss of the property insured, the measure of damages shall be the amount for which the same was insured." The Orient Insurance Company had been doing business in the state since June, 1873, long before the passage of the law in question. In a suit by Daggs in the state court to recover the entire amount for which property that had been destroyed by fire was insured, it was shown that the actual value of the property was much less than the amount of insurance, but the court awarded damages for the sum named in the policy. In the case above named, the insurance company appealed to the Supreme Court on the ground that its property rights were violated by the act in question. Replying to this contention the court said:

It cannot be successfully contended that the state may not prescribe the liabilities under which corporations chartered by its laws shall conduct their business in the future, where no limitation is placed upon its power in this respect by their charters. Legislation to this effect is found in the statute-books of every state. That which a state may do with corporations of its own creation it may do with foreign corporations admitted into the state.

The contract of insurance in this case, dated June, 1893, provided that "said insurance company shall not be liable beyond

[1] 172 U. S., 557.

the actual cash value of the property at the time the loss or damage occurs." In spite of this contract, the Supreme Court supported the right of Daggs to recover $800, the amount named in the policy, though the barn insured was shown to be worth only $100. Clearly a right of contract, which the insurance company had from the time it entered the state, in 1873, up to the time when the act of 1889 went into effect, was taken away by that statute.

A further illustration of the power of a state to increase the burden of conditions under which a foreign corporation, previously admitted, may continue to do business within its limits is supplied by Bedford *v.* Eastern Building and Loan Association,[1] which involved the validity of a statute of Tennessee that required a large deposit of security by such foreign associations doing business in the state. The statute was held to be void in so far as it operated to prevent the completion of contracts already entered into by an association of this sort, but the court remarked that as to new business the association could either comply with the requirements of the statute or else get out of the state.

That a state may absolutely exclude a foreign corporation that has previously been licensed to do business within its limits and has invested large sums on the faith of this license, is clearly shown by the leading case of Doyle *v.* Continental Insurance Company,[2] decided by the Supreme Court in 1876. This case was the closing chapter in a notable bit of history. By an act of March 4, 1870, the legislature of Wisconsin required all foreign insurance companies wishing to do business in that state to obtain a license from the state treasurer and to agree not to remove any suits brought against them from the state to the federal courts. Prior to the passage of this act the Continental Insurance Company, a Connecticut corporation, was regularly engaged in business in Wisconsin, and this corporation subsequently procured the required license and signed the agreement not to remove suits from the state to federal courts. At a later date the insurance company removed a suit brought against it in the Wisconsin court to the federal courts, but the suit went on through

[1] 181 U. S., 227. [2] 94 U. S., 535.

the state courts and judgment was recovered there against the company on the ground in part that the right of removal was lost by the agreement not to remove. On appeal to the United States Supreme Court, the judgment of the Wisconsin courts was reversed, the former court holding that the statute of Wisconsin was unconstitutional in so far as it obstructed removal of suits to the federal courts, and that the agreement by the company not to remove was void. This result was reached in the case of Insurance Company *v.* Moore.[1] Being again sued in the state court by one Drake, the company again removed its case to the federal court, in 1875. Thereupon Drake applied to Doyle, secretary of state for Wisconsin, to revoke the license of the company to do business in the state, as provided by the statute of 1870. On these facts the insurance company applied to the circuit court of the United States for an injunction to forbid the revocation of the license by Doyle, and this injunction was granted. Thereupon Doyle appealed to the United States Supreme Court. It was contended for the insurance company that it had been admitted and had expended large sums to perfect its business organization in Wisconsin before the act of 1870 was passed; that a license had been granted to the company under this act; and that, the provisions of the act as to non-removal of suits to the federal courts and the agreement not to remove being void, as previously decided, the company could not be excluded from the state because it had violated a void act. It was further averred on the part of the company that it would suffer great loss and that its property rights would be violated if its license to do business in the state should be revoked. While considering these allegations in Doyle *v.* Continental Insurance Company,[2] the Supreme Court affirmed its previous decision in Insurance Company *v.* Moore, holding the Wisconsin statute void as to the removal of suits and likewise the agreement under it. In the course of its opinion the court further said:

The correlative power to revoke or recall a permission is a necessary consequence of the main power. A mere license by a state is always revocable. . . . The power to revoke can only be restrained, if at

[1] 20 Wallace, 445. [2] 94 U. S., 535.

all, by an explicit contract upon good consideration to that effect. . . . A license to a foreign corporation to enter a state does not involve a permanent right to remain, subject to the laws and Constitution of the United States. Full power and control over its territories, its citizens, and its business belong to the state. . . . The argument that the revocation in question is made for an unconstitutional reason cannot be sustained. The suggestion confounds an act with an emotion, or a mental proceeding, which is not the subject of inquiry in determining the validity of a statute. An unconstitutional reason or intention is an impracticable suggestion, which cannot be applied to the affairs of life. If the act done by the state is legal, is not in violation of the Constitution or laws of the United States, it is quite out of the power of any court to inquire what was the intention of those who enacted the law. . . . No right of the complainant under the laws or Constitution of the United States, by its exclusion from the state, is infringed; and this is what the state now accomplishes. There is nothing, therefore, that will justify the interference of this court.

The bill requesting an injunction to prevent the revocation of the license was dismissed.

With ample power to refuse admission to foreign corporations and to expel them from its territory after they have been admitted, a state may maintain production on a competitive basis within its limits. A foreign corporation owning plants of a particular character in other states may be denied the right to purchase such factories in any given state, or to continue in their ownership or operation there even after their purchase. Or, if absolute exclusion seems too radical, a heavy special tax may be laid by any state on each foreign corporation owning mines, forests or factories within its limits, and also similar mines, forests or factories in other states. The result of such taxes would be to bring the mines, forests or factories rapidly back into the hands of independent operators. If only a single state adopts this course, it may be unprofitable for independent producers to operate factories there of the sort owned in other states by a trust, because the trust products may come from other states and be sold below cost in the state from which it had been excluded. It seems probable, however, that the people of any state could stand prices below cost for trust products as long as the trust

cared to sell on that basis. If the power of foreign corporations to monopolize the instruments of production in all the states is destroyed, it may be suggested that a monopoly can be reached by some manipulation of the stocks of domestic corporations, or by the conveyance of property to trustees. When such methods are adopted, however, it may be safely assumed that the power of the state will be ample to deal with them. At present the foreign corporation is the strongest tool of monopoly. It is idle to say that other states are at the mercy of the few that are bartering corporate licenses for a fraction of monopoly gains, for any state may refuse the exercise of these licenses within its limits. Unless states do this, monopolies of the instruments of production will continue to displace competitive prices. There cannot be competition among supplies from factories under common ownership. If competition is not maintained, the alternative is state regulation of prices or full state ownership. At the present time the United States is moving rapidly toward the former if not the latter of these two.

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